

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8110 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

NARANBHAI RAMJIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8110 of 2003
MR SK JHAVERI for Petitioner No. 1-4
NOTICE SERVED for Petitioner No. 2
MS ARCHANA RAVAL, AGP for Respondent No. 1-4
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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 28/09/2004

ORAL JUDGEMENT

#. Rule. Ms.Archana Raval, learned AGP waives service of

rule on behalf of the respondents.

#. With the consent of the learned advocates for the parties, the matter is taken up for hearing today.

#. In this petition filed under Article 226 / 227 of the Constitution of India, the petitioners have challenged the legality and validity of the order dated 31.3.2003 passed by the Gujarat State Cooperative Tribunal ("the Tribunal" for short) in Appeal No.587 of 1999 and also the order passed by respondent No.3 dated 26.7.1999 as well as the order dated 22.4.1999.

#. It appears from the record that the proceedings were initiated under Section 93 of the Gujarat Cooperative Societies Act, 1961 ("the Act" for short) and the Registrar, Cooperative Societies ordered the inquiry under Section 93 of the Act and appointed one B.G.Lotiya as Inquiry Officer to conduct the inquiry under Section 93 of the Act on 12.11.1998.

#. It is the contention of the petitioners that by report dated 10.3.1999, the Inquiry Officer Mr.Lotiya submitted his report to the Registrar whereby the said Inquiry Officer has exonerated and discharged the petitioner and other Directors from the allegations and the liability under Section 93 of the Act. That even by order dated 22.04.1999, the Registrar, Cooperative Societies also issued the notice under Section 90(2)(a) for recovery of fees paid to the inquiry officer under Section 86 of the Act. It is the contention of the petitioner that inspite of the above referred report by Mr.Lotiya, the Registrar, Cooperative Societies without mentioning about the said report, passed another order appointing another person as inquiry officer under Section 93 of the Act. That order came to be challenged before the Tribunal by way of appeal no.587 of 1999 and the Tribunal rejected the said appeal by judgment and order dated 31.03.2003. Hence, the present Special Civil Application.

#. It is the contention on behalf of the petitioners that once the inquiry under Section 93 of the Act was initiated and conducted and the inquiry officer has submitted his report, by which the inquiry officer has exonerated and discharged the petitioners and other directors from the allegations and liability, another inquiry for the same allegations under Section 93 of the Act is not permissible. It is not in dispute that Mr.Lotiya, inquiry officer has earlier submitted his report in the proceedings under Section 93 of the Act.

Ms.Archana Raval, learned A.G.P., under instruction, has admitted that earlier with regard to the same allegations and the charges, the inquiry was initiated under Section 93 of the Act and that the inquiry officer has submitted his report in which the petitioners and other directors were exonerated from the said allegation and charges. In that view of the matter, when earlier inquiry under Section 93 of the Act came to be initiated and the inquiry was conducted and when the inquiry officer has submitted his report in which the petitioner and other persons came to be exonerated, no second inquiry under Section 93 of the Act with regard to the same charges and allegations is maintainable.

#. In the aforesaid facts and circumstances, this petition is required to be allowed and accordingly it is allowed. The impugned order dated 26.07.1999 passed by the Joint Registrar, Cooperative Societies for holding the inquiry under Section 93 of the Act as well as the judgment and order passed by the Tribunal dated 31.03.2003 in appeal no.587 of 1999 are hereby quashed and set aside.

#. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)